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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/778,687      | 02/07/2001  | Mark James Kline     | 8415                | 5337             |

27752 7590 04/11/2003

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| EXAMINER |
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WEBB, JAMISUE A

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3761

DATE MAILED: 04/11/2003

127

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K

|                              |                 |              |
|------------------------------|-----------------|--------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s) |
|                              | 09/778,687      | KLINE ET AL. |
|                              | Examiner        | Art Unit     |
|                              | Jamisue A. Webb | 3761         |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 10 February 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 4 and 19-25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 4 is/are allowed.

6) Claim(s) 19-21 and 23-25 is/are rejected.

7) Claim(s) 22 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

|  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 19, 20, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Perrotta et al. (4,117,841).
3. With respect to Claim 19: Perrotta discloses the use of a medicated bandage that has a rupturable pocket confining a quantity of medicament (see abstract). The person using the bandage would be located externally of the bandage, the person being the effect generating element where the person would rupture the pocket of the bandage and the bandage would change from the condition of being non-medicated to be medicated.
4. With respect to Claim 20: the absorbent material would change properties from being medicated to non medicated.
5. With respect to Claim 24: After a certain amount of time the medicament would be used up, and therefore the medicated effects would be temporary.
6. With respect to Claim 25: The transformation involves contacting a first portion (the medicament) with a second portion (the absorbent material) (See all figures).
7. Claims 19-21, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Lavon et al. (5,330,459).

8. With respect to Claim 19: Lavon discloses the use of a disposable diaper (20) that is worn externally of the body, where a person can be considered an external change aid that is an effect generating element, where the effect is using an inflatable component (200) to provide a spacer element to maintain a fecal void space intermediate the topsheet and backsheet (see abstract).

9. With respect to Claim 20 and 21: The inflation changes the size of the spacer.

10. With respect to Claim 24: Lavon discloses gas is allowed to be released as a tare less than 100cc/hour (column 5, lines 48-52), therefore the inflation being temporary.

11. With respect to Claim 25: the inflation would cause the spacer element to contact the topsheet and push up on the topsheet to further separate the topsheet from the backsheet.

12. Claims 19-21, and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasse (5,769,832).

13. With respect to Claim 19: Hasse discloses the use of a disposable diaper (20) that is worn externally of the body, where a person can be considered an external change aid that is an effect generating element, where the effect is disengaging the adhesive tape fasteners from a release strip, to release perfume in the air (column 7, lines 52-65).

14. With respect to Claims 20, 21 and 23: When the tab is disengaged the adhesive is exposed and therefore increasing the tackiness of the tab fastener, and therefore activating.

15. With respect to Claims 24 and 25: The adhesive tape could be attached to the backsheet (to fit the article around the wearer) and therefore the adhesive is not exposed and the tackiness is temporary.

***Allowable Subject Matter***

16. Claim 4 is allowed.
17. Claim 22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

18. Applicant has argued that the withdrawal of the allowable subject matter is in clear contrary to direction provided in the MPEP section 706.07 and 707.07(g). However these sections in the MPEP are drawn to making an action final (which the action was made non-final due to the new rejection), and drawn to making a piecemeal analysis with regards to a 103 obvious rejection. Neither one of these sections being relevant to whether allowability of claims can be withdrawn. Therefore arguments are not persuasive.
19. With respect to Applicant's arguments that it is improper for the examiner to reject a claim on the basis that a human person using something disclosed a reference is the claimed invention, based on the fact that it is improper for applicants to claim a human person: The statute 35 USC 101 states that a human body cannot be claimed, however a statute stating that a human body part cannot be used as prior art does not exist. The applicant is claiming an external change aid, with functional language only. The applicant has not claimed any sort of structure this change aid has. Therefore, a human person is fully capable of performing the functional limitations as set forth in the claims. Absent any structural limitations of the external change aid, a human body does read on the claim. Therefore it is the examiner's position the rejection made is proper and therefore stands as stated above.

***Conclusion***

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

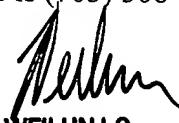
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

*JW*  
jaw  
April 9, 2003

  
WEILUN LO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700